

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED - 5 2000
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2000 JUL -5 P 12: 05

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Audit Referral: 99-18
Audit Referral Date: October 18, 1999
Date Activated: May 17, 2000

Statute of Limitations Expiration:
January 24, 2003 — November 1, 2003¹
Staff Member: Albert R. Veldhuyzen

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Committee to Elect Mike Burkhold to Congress and
Hulic Ratteree, as treasurer

RELEVANT STATUTES/REGULATIONS:

2 U.S.C. § 441a(f)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(2)(A)
11 C.F.R. § 110.1(b)(5)(ii)
11 C.F.R. § 110.1(k)(3)
11 C.F.R. § 110.1(b)(2)
11 C.F.R. § 110.2(b)(2)
11 C.F.R. § 110.9(a)
11 C.F.R. § 103.3(b)(3)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ The statute of limitations date for the earliest violation for the receipt of excessive contributions is January 24, 2003 for a contribution received on January 24, 1998. The statute of limitations date for the last violation for the receipt of excessive contributions is November 1, 2003 for a contribution received on November 1, 1998.

21-04-402-4053

I. GENERATION OF MATTER

This matter was generated by an audit of the Committee to Elect Mike Burkhold to Congress ("Committee") and Hulec Ratteree, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b).² See Attachments 1 and 2.

II. FACTUAL AND LEGAL ANALYSIS

The Committee received excessive contributions from 21 individuals³ totaling \$18,025 as well as excessive contributions of \$2,375 from four multicandidate political action committees.⁴ Attachments 1 and 2. The Committee's treasurer did not obtain written redesignations or reattributions of the excessive contributions within 60 days from the date that the Committee received such contributions. 11 C.F.R. §§ 110.1(b)(5)(ii) and 110.1(k)(3). Therefore, the Committee's treasurer was required to refund the excessive contribution amounts within 60 days

² This Office notes that MUR 4855 also involved the Committee to Elect Mike Burkhold to Congress. MUR 4855 arose out of a complaint by Spratt for Congress, alleging that the Committee violated 11 C.F.R. § 104.3(b)(4)(iii) by failing to identify in its disclosure reports the name, address, occupation and employer of all contributors who contributed more than \$200. Spratt for Congress also stated that the Committee did not exercise "best efforts" pursuant to 11 C.F.R. § 104.7 to obtain this information. Moreover, Spratt for Congress alleged that the Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.3(d) by failing to accurately report "personal loans" by Mike Burkhold to the Committee on its April 15, 1998 Quarterly Report, 1998 Pre-Primary Report, and July 15, 1998 Quarterly Report, or report the repayment of a loan on its October 15, 1998 Quarterly Report. MUR 4855 was activated on June 28, 1999, deactivated on July 16, 1999, and closed on June 6, 2000 for staleness. The Audit Division investigated and considered these issues which arose out of MUR 4855 and found that neither of them met the thresholds for referral for enforcement action by the Office of General Counsel.

³ Although the Audit Referral notes 22 individuals exceeding the limits, the schedule of excessive contributions shows that item 12 (Mr. D. Tim Nealy) was not an excessive contribution as the check for \$2,000 was signed by both spouses. Attachments 1 and 2. The Audit Division now agrees that only 21 individuals exceeded the contribution limits. At this time, this Office makes no recommendation regarding individuals not designated as respondents herein since their excessive contributions are below the Commission's threshold for pursuing them in an enforcement action.

⁴ The four political action committees ("PACs") and the excessive amounts contributed were as follows: Flowers Industries PAC (\$250); New Republican Majority Fund PAC (\$1,625); Monday Morning PAC (\$250); Campaign for Working Families PAC (\$250). All four PACs met the criteria established in 11 C.F.R. § 100.5(e)(3) for consideration as multicandidate committees for contribution purposes. This Office does not make any recommendations regarding these PACs as their excessive contributions are below the Commission's threshold for pursuing them.

21.04.402.4064

of receipt of such contributions. 11 C.F.R. § 103.3(b)(3). Despite this requirement the Committee did not refund most contributions until after the audit exit conference on May 20, 1999. None of these contributions were refunded within the 60 day time period. Pursuant to the Interim Audit Report recommendations, the Committee refunded excessive contributions in the amount of \$13,700 prior to the Final Audit Report dated October 7, 1999. Therefore, the Committee appears to have unresolved excessive contributions totaling \$6,700 [(\$18,025 + \$2,375) - \$13,700].

Based on the audit referral and schedule of contributions, the Office of General Counsel recommends that the Commission find reason to believe that the Committee to Elect Mike Burkhold to Congress, and Hulec Ratteree, as treasurer, violated 2 U.S.C. § 441a(f).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

As the facts appear to be straightforward and the only violation at issue is the acceptance of excessive contributions, the Office of General Counsel recommends that the Commission enter into conciliation with the Committee prior to a finding of probable cause to believe.

Attached for the Commission's approval is the proposed conciliation agreement

21-04-402-4065

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Committee to Elect Mike Burkhold to Congress and Hulec Ratteree, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.
3. Approve the attached Factual and Legal Analysis.
4. Approve the attached proposed Conciliation Agreement.
5. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

21.04.402.4066
Date

7/3/00

BY:

Kim Leslie Bright
Kim Leslie Bright
Associate General Counsel

Attachments

1. Audit Referral Materials
2. Audit Schedule of Contributions
3. Committee Response to the Audit Exit Conference recommendations dated June 4, 1999
4. Proposed Factual and Legal Analysis
5. Proposed Conciliation Agreement

F1/ Schedule B

21-04-402-4067

Federal Election Commission
Audit Division

Corrected Excessive Contrib.

Index:

Committee to Elect Mike Burkhold to Congress
(assignment)
Schedule of Excessive Contributions
(subject)

	Prefix	Fname	Mname	Lname	Suffix	Amount	Date	Excessive Amount	Comments
1)	Mr.	Robert	W.	Brewer		\$ 2,000.00	10/20/98	\$1,000.00	No letter for Stephanie
2)	Dr.	Michael	N.	Brown	MD	\$ 1,000.00	4/1/98	\$1,000.00	
						\$ 1,000.00	5/18/98		
3)	Mr.	Larry	W.	Carroll		\$ 2,000.00	5/26/98	\$1,000.00	
4)	Mr.	Thomas	B.	Crates		\$ 1,500.00	9/10/98		
						\$ 200.00	9/21/98	\$700.00	signed by Thomas
5)	Dr.	Michael	S.	Dale		\$ 500.00	3/26/98		
						\$ 250.00	5/20/98		
						\$ 500.00	6/3/98	\$250.00	
6)	Dr.	Malcolm		Edwards	MD	\$ 1,000.00	3/13/98		
						\$ 1,000.00	4/20/98	\$1,000.00	
7)	Mr.	H.	David	Fletcher		\$ 100.00	8/12/98		
						\$ 1,000.00	10/27/98	\$100.00	
8)	Mr.	Steve		Kinlaw		\$ 500.00	7/6/98		
						\$ 1,500.00	10/13/98		Missing Check
								\$1,000.00	\$1,500 check
9)		Carole		Lee		\$ 1,000.00	6/29/98		
						\$ 500.00	10/21/98	\$500.00	
10)	Ms.	Mary	Ivey	Matthews		\$ 500.00	9/14/98		
						\$ 500.00	10/23/98		
						\$ 250.00	10/29/98	\$250.00	
11)		Carl L.		Mosack		\$ 2,000.00	6/7/98		

Corrected Excessive Contrib.

12)	Mr.	D.	Tim	Nealey	\$ 1,000.00	11/1/98	\$1,000.00	Carl signed checks
13)	Mr.	Ron	W	Prestage	\$ 2,000.00	11/1/98		NSF reported check reissued in 1/99, Check signed by both spouses, not excessive
14)	Mr.	Christopher		Price	\$ 2,000.00	4/17/98	\$1,000.00	
15)	Mr.	J.	Barry	Templeton	\$ 1,000.00	6/23/98		
16)	Mr.	James	S.	Vinson	\$ 200.00	10/23/98	\$200.00	
17)	Mr.	Christopher	E.	Wood	\$ 2,000.00	10/12/98	\$1,000.00	\$2,000 his signature
18)	Mr.	James	R.	Worrell Jr.	\$ 2,000.00	7/9/98	\$1,000.00	
19)	Ms.	Birdie		Yager	\$ 1,000.00	12/31/97		
20)	Ms.	Birdie		Yager	\$ 25.00	1/24/98	\$25.00	
21)	Mrs.	Lorryn		Yager	\$ 2,000.00	5/20/98		Dexter also gave \$2,000 on Alex's tape as 6/22
22)	Mrs.	Rhonda	B.	Yager	\$ 2,000.00	7/17/98	\$1,000.00	Lorryn signed check Lorryn signed check on Alex's tape 6/22
	Ms.	Holly		Yager	\$ 1,000.00	6/9/98	\$1,000.00	No designation on check
	Mrs.	Rhonda	B.	Yager	\$ 2,000.00	5/20/98	\$1,000.00	Total \$4,000 signed by Rhonda
					\$ 2,000.00	6/9/98	\$1,000.00	
					\$ 45,025.00		\$18,025.00	

P - Primary Election = 8 excessive contributions
G - General Election = 14 excessive contributions
Item #12 from D. Tim Nealey was signed by Tim Nealey and Leanne Nealey. This item is not excessive, and is not included in the total amount excessive.

Excessive PACs

Federal Election Commission
Audit Division

Committee to Elect Mike Burkhold to Congress

(assignment)

Political Action Committees - Excessive Contributions

(subject)

Name of PAC	Date	Amount	Excessive Amount
Flowers Industries PAC	10/20/98	\$ 5,000.00	
Flowers Industries PAC	10/26/98	\$ 250.00	\$ 250.00
New Republican Majority Fund PAC	10/26/98	\$ 5,000.00	
New Republican Majority Fund PAC	07/16/98	\$ 1,000.00	\$ 1,000.00
New Republican Majority Fund PAC	10/28/98	\$ 625.00	\$ 625.00
Monday Morning PAC	9/17/98	\$ 5,000.00	
Monday Morning PAC	9/29/98	\$ 250.00	\$ 250.00
Campaign for Working Families PAC	9/24/98	\$ 5,000.00	
Campaign for Working Families PAC	10/2/98	\$ 250.00	\$ 250.00
		Total	\$ 2,375.00

65004-204-40-73

FROM : LifeBoat Marketing Group-Car.1 FAX NO. : 843-723-6489

Jun. 03 1999 03:09PM P3

F9/-1
PI

BURKHOLD FOR CONGRESS

June 4, 1999

June 4, 1999

Ms. Nicole Clay
Federal Election Commission
999 E. Street
Washington, DC 20463

Re: Initial Audit Findings

Dear Nicole:

This letter is in response to the initial findings of the Commission's audit of the Burkhold for Congress campaign.

It has and always will be this Committee's intent to follow the laws governing federal campaigns. During the audit, mistakes, or omissions were discovered, most of which were a result of paperwork errors. As was discussed with you during the initial audit review, there was a high staff turnover during the campaign, leading to some confusion in paperwork management. Also, to compound this problem, none of the campaign staff had any federal election finance experience. Inconsistencies in paperwork management by a novice campaign should in no way be considered intent to violate the law.

The Burkhold for Congress Committee has already begun the process of amending all relevant reports so as to provide the Commission with accurate reports as soon as possible. As you instructed, the Committee will not submit any amendments until the Commission's audit is final.

It is this Committee's understanding that a majority of the initial audit findings are only correctable by amendments to the reports. These items include.

- Second Quarter contributions not reported
- Interest received not reported
- Refunds not reported
- 1999 disbursements reported in 1998
- Disclosure Errors
- Political Action Committee's not itemized

Again, this Committee wishes to fully comply with the laws governing federal campaigns.

POST OFFICE BOX 10448 • ROCK HILL, SOUTH CAROLINA • 29731
PHONE: 803-927-1200 • FAX: 843-963-0257

ATTACHMENT 3
Page 1 of 3

21-04-402-4070

p2

FROM : LifeBoat Marketing Group-Car.1 FAX NO. : 643-723-6489

Jun. 03 1999 03:09PM P4

- 2 -

June 4, 1999

The Committee stands ready to correct and amend all relevant reports and desires to do so as soon as possible.

The Burkhold for Congress Committee has already begun to correct errors discovered during the initial audit that are not correctable by amendment. The Committee wishes to note that in its best efforts to assist the FEC in completing its audit of the Committee, it notified you of several potentially excessive contributions before the audit began. These contributions are included in the initial audit findings. Items that the Committee is taking immediate steps to correct are:

- Possible excessive contributions by individuals - With the exception of three individuals, the potential "excessive" contributions that audit discovered were a result of misplaced paperwork. These potentially excessive contribution were the result of:
 1. Either checks contributed during the right time during the campaign, but missing a primary/general election designation, or
 2. Donations made by married couples but missing a letter designating all, or part of the contribution to one spouse or the other.

The Committee wishes to point out, that except for the misplaced paperwork all of the contributions described in 1 & 2 above were made and received with proper intent to comply with federal law. These contributions in no way represent a planned attempt by the Committee to try to avoid federal campaign law.

Because of this Committee's desire to comply with all federal regulations, the Committee has begun fundraising and has made a tremendous effort to clear up these potentially excessive contributions within its 10-day response time. Attached is a list of refunds checks, refunding as many "potentially excessive" contributions as possible. Copies of the cancelled checks will be provided to you as soon as they are received. For those that the Committee was not able to refund, a letter regarding the contribution has been obtained, and is attached. While the Committee maintains that these contributions were the result of misplaced paperwork, it has refunded as many of these potentially excessive contributions as possible in order to clarify any potential contribution issues.

- Possible excessive contributions by Political Action Committees: While the Burkhold for Congress committee made every effort to comply with federal law, some mistakes were made. Each of the mistakes in this category is a result of a quite confusing process that involved a Joint Fundraising Committee. Each excessive amount was contributed through the Joint Fundraising Committee and was simply not realized by the Burkhold for Congress Committee. The Burkhold for Congress Committee has already started fundraising efforts in order to refund these excessive contributions as soon as possible.

In summary, the Burkhold for Congress Committee stands willing and ready to correct any and all mistakes noted during the initial audit, and is demonstrating its desire to do so by immediately correcting as many problems as possible. The Committee will continue to make its best efforts to correct all of these problems.

This Committee has made every effort to assist you, and once again wants to express that any and all findings by the audit were a result of mistakes made by a novice campaign. As

21-04-102-4071

ATTACHMENT 3 of 3
Page 2

CONTINUE FROM PREVIOUS PAGE 001
any and all findings by the [redacted] and once again [redacted] to express that
[redacted] were a result of mistakes made by a novice campaign. As

p3

FROM : LifeBoat Marketing Group-Car.1 FAX NO. : 843-723-6489

Jun. 03 1999 03:10PM P5

- 3 -

June 4, 1999

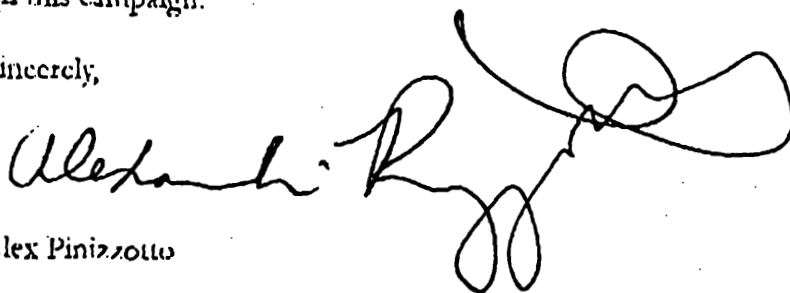
previously stated, no person on the staff had ever had previous federal election finance experience.

It is this Committee's belief that ordinary citizens should be able to participate in this Country's political process. This campaign represented that participation. Any and all mistakes discovered by the Commission are the result of simple bookkeeping errors. There was never any attempt by the Committee to avoid or skirt federal law.

As previously stated, this Committee will make every effort to correct every problem as soon as possible. However, as you well know, the Committee currently has no significant cash on hand, and is actually in debt. Many of the corrections will require fundraising efforts. Our mid-year report, due July 31, will, of course, reflect our fundraising efforts and the refunds issued. A copy of this report will be forwarded to you when it is filed.

It is our intention to demonstrate to you and the Commission that, as these efforts are underway, it is this Committee's desire to correct all potential mistakes and close the books on this campaign.

Sincerely,



Alex Pinizzotto

Attachments:

1. Television ad invoices and scripts
2. Invoice #5 from the Carlyle Gregory
3. List of refund checks to individuals with potentially excessive contributions.
4. Designation letter

21-04-402-4072